

SENATE BILL NO. 403—SENATOR DENIS

MARCH 20, 2019

Referred to Committee on Education

SUMMARY—Revises provisions relating to data privacy for pupils. (BDR 34-309)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to education; requiring each public and private school to provide certain information to a pupil or the parent or legal guardian of a pupil before providing technology to a pupil or allowing a pupil to use a school service; revising provisions relating to school service providers; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law generally controls the manner in which a school service provider may use the personally identifiable information of a pupil and prohibits a school service provider from engaging in targeted advertising. (NRS 388.292) "School service provider" is defined in existing law as a provider of certain Internet services, online services or mobile applications. (NRS 388.283, 388.284) **Section 1** of this bill requires a public school, including a charter school and a university school for profoundly gifted pupils, to post certain information on the Internet website of the school before a pupil uses a school service of a school service provider. Such information must include a description of the laws governing school service providers, a list of the school service providers for the school, a copy of the plan for the security of data established by the school service provider, any other actions taken by the public school, the school district, or the applicable governing body to protect the data of the pupils and the manner in which a person may report suspicious activity related to the use of a school service. Each school must also communicate the manner in which to locate the information at the beginning of each school year.

Section 2 of this bill revises the prohibition on targeted advertising by a school service provider to prohibit the school service provider from engaging in targeted advertising within its school service or on any other Internet website, online service or mobile application if the targeted advertising is based upon information gathered from its school service. **Section 2** also authorizes a school service provider to use the personally identifiable information of a pupil to perform certain research which



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is required or authorized by federal or state law. **Section 3** of this bill authorizes a school service provider to use aggregated, deidentified information derived from the personally identifiable information of pupils to develop and improve the products of the school service provider.

Existing law requires a school service provider to establish a plan for the security of any data concerning pupils that is collected or maintained by the school service provider. (NRS 388.293) **Section 2.5** of this bill requires the school service provider to inform a school district, charter school or university school for profoundly gifted pupils or a private school if there is a breach of the plan for the security of the data. **Section 2.5** further requires a school that receives such notice to provide the notice to the pupils and the parents and legal guardians of pupils who are less than 18 years of age.

Sections 5-10 of this bill establish similar provisions for private schools.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 388 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before a public school, including, without limitation, a charter school and a university school for profoundly gifted pupils, allows a pupil to use any school service or provides a pupil with any technology, the public school must post on the Internet website of the public school information that:

(a) Summarizes the laws governing school service providers set forth in this section and NRS 388.281 to 388.296, inclusive;

(b) Lists each school service provider for the school and the plan for the security of any data concerning pupils, including, without limitation, covered information and personally identifiable information, that is established by the school service provider pursuant to NRS 388.293;

(c) Describes any other actions taken by the public school, the school district or the governing body of the charter school or university school for profoundly gifted pupils, as applicable, to protect the security of any data collected by a school service provider, including, without limitation, covered information and personally identifiable information, concerning pupils; and

(d) Describes the manner in which a pupil or the parent or legal guardian of a pupil may report any suspicious activity relating to the use of a school service by a pupil.

2. At the beginning of each school year, each public school, including, without limitation, a charter school and a university school for profoundly gifted pupils, shall communicate to the pupils enrolled at the school and the parents and legal guardians of such pupils the availability of the information described in subsection 1 and the manner in which to locate the information.

3. As used in this section:



(a) "Covered information" means the personally identifiable information of a pupil or any information that is linked to the personally identifiable information of a pupil which is:

(1) Created by or provided to a school service provider by a pupil or the parent or legal guardian of a pupil through the use of a school service;

(2) Created by or provided to a school service provider by an employee of a public school, a school district or the governing body of a charter school; or

(3) Gathered by a school service provider from any other source and associated with the identity of a pupil.

(b) "Personally identifiable information" has the meaning ascribed to it in 34 C.F.R. § 99.3.

(c) "School service" has the meaning ascribed to it in NRS 388.283.

(d) "School service provider" has the meaning ascribed to it in NRS 388.284.

Sec. 2. NRS 388.292 is hereby amended to read as follows:

388.292 1. Except as otherwise provided in subsections 2 and 5, a school service provider may collect, use, allow access to or transfer personally identifiable information concerning a pupil only:

(a) For purposes inherent to the use of a school service by a teacher in a classroom or for the purposes authorized by the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable, so long as it is authorized by federal and state law;

(b) If required by federal or state law;

(c) In response to a subpoena issued by a court of competent jurisdiction;

(d) To protect the safety of a user of the school service; or

(e) With the consent of any person required in a policy of the school district, charter school or university school for profoundly gifted pupils, as applicable, or, if none, with the consent of the pupil, if the pupil is at least 18 years of age, or the parent or legal guardian of the pupil if the pupil is less than 18 years of age.

2. A school service provider may transfer personally identifiable information concerning a pupil to a third-party service provider if the school service provider provides notice to any person designated in a policy of the school district, charter school or university school for profoundly gifted pupils, as applicable, to receive such notice or, if none, to the pupil, if the pupil is at least 18 years of age, or the parent or guardian of the pupil and:



(a) Contractually prohibits the third-party service provider from using any such information for any purpose other than providing the contracted school services to, or on behalf of, the school service provider;

(b) Prohibits the third-party service provider from disclosing any personally identifiable information concerning a pupil unless the disclosure is authorized pursuant to subsection 1; and

(c) Requires the third-party service provider to comply with the requirements of NRS 388.281 to 388.296, inclusive **H**, *and section 1 of this act*.

3. A school service provider shall delete any personally identifiable information concerning a pupil that is collected or maintained by the school service provider and that is under the control of the school service provider within a reasonable time not to exceed 30 days after receiving a request from the board of trustees of the school district in which the school that the pupil attends is located, the governing body of the charter school that the pupil attends or the governing body of the university school for profoundly gifted pupils that the pupil attends, as applicable. The board of trustees or the governing body, as applicable, must have a policy which allows a pupil who is at least 18 years of age or the parent or legal guardian of any pupil to review such information and request that such information about the pupil be deleted. The school service provider shall delete such information upon the request of the parent or legal guardian of a pupil if no such policy exists.

4. Any agreement entered into by a school service provider that provides for the disclosure of personally identifiable information must require that the person or governmental entity to whom the information will be disclosed abide by the requirements imposed pursuant to this section.

5. A school service provider shall not:

(a) Use personally identifiable information to engage in targeted advertising **H** *within the school service or on any other Internet website, online service or mobile application if the targeted advertising is based upon any information acquired from use of the school service*.

(b) Except as otherwise provided in this paragraph, sell personally identifiable information concerning a pupil. A school service provider may transfer personally identifiable information concerning pupils to an entity that purchases, merges with or otherwise acquires the school service and the acquiring entity becomes subject to the requirements of NRS 388.281 to 388.296, inclusive, *and section 1 of this act*, and any contractual provisions between the school service provider and the board of trustees of a school district, the governing body of a charter school or the



governing body of a university school for profoundly gifted pupils, as applicable, governing such information.

(c) Use personally identifiable information concerning a pupil to create a profile of the pupil for any purpose not related to the instruction of the pupil provided by the school without the consent of the appropriate person described in paragraph (e) of subsection 1.

(d) Use personally identifiable information concerning a pupil in a manner that is inconsistent with any contract governing the activities of the school service provider for the school service in effect at the time the information is collected or in a manner that violates any of the provisions of NRS 388.281 to 388.296, inclusive ~~H~~, and section 1 of this act.

(e) Knowingly retain, without the consent of the appropriate person described in paragraph (e) of subsection 1, personally identifiable information concerning a pupil beyond the period authorized by the contract governing the activities of the school service provider.

6. This section does not prohibit the use of personally identifiable information concerning a pupil that is collected or maintained by a school service provider for the purposes of:

(a) Adaptive learning or providing personalized or customized education;

(b) Maintaining or improving the school service;

(c) Recommending additional content or services within a school service;

(d) Responding to a request for information by a pupil;

(e) Soliciting feedback regarding a school service; ~~for~~

(f) *Performing research which:*

(1) Is required by federal or state law; or

(2) Is authorized by federal or state law, is performed under the direction of a public school, school district or the Department and does not use any personally identifiable information concerning a pupil for any purpose relating to advertising or creating a profile of the pupil for any purpose not related to the instruction of the pupil; or

(g) Allowing a pupil who is at least 18 years of age or the parent or legal guardian of any pupil to download, transfer, or otherwise maintain data concerning a pupil.

7. A school service provider that violates the provisions of this section is subject to a civil penalty in an amount not to exceed \$5,000 per violation. The Attorney General may recover the penalty in a civil action brought in the name of the State of Nevada in any court of competent jurisdiction.



Sec. 2.5. NRS 388.293 is hereby amended to read as follows:

388.293 1. A school service provider shall establish and carry out a detailed plan for the security of any data concerning pupils that is collected or maintained by the school service provider. The plan must include, without limitation:

(a) Procedures for protecting the security, privacy, confidentiality and integrity of personally identifiable information concerning a pupil; and

(b) Appropriate administrative, technological and physical safeguards to ensure the security of data concerning pupils.

2. A school service provider shall ensure that any successor entity understands that it is subject to the provisions of NRS 388.281 to 388.296, inclusive, *and section 1 of this act* and agrees to abide by all privacy and security commitments related to personally identifiable information concerning a pupil collected and maintained by the school service provider before allowing a successor entity to access such personally identifiable information.

3. A school service provider shall provide notice to a school district, charter school or university school for profoundly gifted pupils, as applicable, or a private school pursuant to section 10 of this act, of any breach of the plan for the security of any data concerning pupils and any actions taken or being taken by the school service provider to address the breach. The notice must be provided as soon as practicable and without unreasonable delay.

4. A school district, charter school, university school for profoundly gifted pupils or private school that receives a notice pursuant to subsection 3, shall provide the notice to each pupil affected by the breach or, if a pupil is less than 18 years of age, the parent or legal guardian of the pupil. The notice must be provided as soon as practicable and without unreasonable delay.

Sec. 3. NRS 388.295 is hereby amended to read as follows:

388.295 A school service provider may use and disclose information derived from personally identifiable information concerning a pupil to demonstrate the effectiveness of the products or services of the school service provider, including, without limitation, for use in advertising or marketing regarding the school service, *and to develop and improve a school service or any other Internet website, online service or mobile application of the school service provider* so long as the information is aggregated or is presented in a manner which does not disclose the identity of the pupil about whom the information relates.



1 **Sec. 4.** Chapter 394 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 5 to 10, inclusive, of this
3 act.

4 **Sec. 5.** *As used in sections 5 to 10, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 6 to 9, inclusive, of this act have the meanings ascribed*
7 *to them in those sections.*

8 **Sec. 6.** *“Covered information” means the personally*
9 *identifiable information of a pupil or any information that is*
10 *linked to the personally identifiable information of a pupil which*
11 *is:*

12 1. *Created by or provided to a school service provider by a*
13 *pupil or the parent or legal guardian of a pupil through the use of*
14 *a school service;*

15 2. *Created by or provided to a school service provider by an*
16 *employee of a private school or the governing body of a private*
17 *school; or*

18 3. *Gathered by a school service provider from any other*
19 *source and associated with the identity of a pupil.*

20 **Sec. 7.** *“Personally identifiable information” has the*
21 *meaning ascribed to it in 34 C.F.R. § 99.3.*

22 **Sec. 8. 1.** *“School service” means an Internet website,*
23 *online service or mobile application that:*

24 (a) *Collects or maintains personally identifiable information*
25 *concerning a pupil;*

26 (b) *Is used primarily for educational purposes; and*

27 (c) *Is designed and marketed for use in private schools and is*
28 *used at the direction of teachers and other educational personnel.*

29 2. *The term does not include:*

30 (a) *An Internet website, online service or mobile application*
31 *that is designed or marketed for use by a general audience, even if*
32 *the school service is also marketed to private schools;*

33 (b) *An internal database, system or program maintained or*
34 *operated by a private school or the governing body of a private*
35 *school;*

36 (c) *A school service for which a school service provider has:*

37 (1) *Been designated by the governing body of a private*
38 *school as a school official pursuant to the Family Educational*
39 *Rights and Privacy Act of 1974, 20 U.S.C. § 1232g;*

40 (2) *Entered into a contract with the governing body of a*
41 *private school; and*

42 (3) *Agreed to comply with and be subject to the provisions*
43 *of the Family Educational Rights and Privacy Act of 1974, 20*
44 *U.S.C. § 1232g, relating to personally identifiable information; or*



(d) Any instructional programs purchased by the governing body of a private school.

Sec. 9. “School service provider” means a person that operates a school service, to the extent the provider is operating in that capacity.

Sec. 10. 1. Before a private school allows a pupil to use any school service or provides a pupil with any technology, the private school must post on the Internet website of the school information that:

(a) Summarizes the laws governing school service providers;

(b) Lists each school service provider for the private school and the plan for the security of any data concerning pupils, including, without limitation, covered information and personally identifiable information, that is established by the school service provider;

(c) Describes any other actions taken by the private school to protect the security of any data collected by a school service provider, including, without limitation, covered information and personally identifiable information, concerning pupils; and

(d) Describes the manner in which a pupil or the parent or legal guardian of a pupil may report any suspicious activity relating to the use of a school service by a pupil.

2. At the beginning of each school year, each private school shall communicate to the pupils enrolled at the school and the parents and legal guardians of such pupils the availability of the information described in subsection 1 and the manner in which to locate the information.

Sec. 11. This act becomes effective upon passage and approval for the purpose of adopting regulations and performing any other administrative tasks that are necessary to carry out the provisions of this act and on January 1, 2020, for all other purposes.

